IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 958 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT AYURVED UNIVERSITY - Petitioner(s)
Versus
AMRISH BHARDWAJ SHASTRI - Respondent(s)

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Appearance :
MR RC KAKKAD for Petitioner(s) : 1,
MR HASIT H JOSHI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/03/2007

ORAL JUDGMENT

1. In this petition, the petitioner-Gujarat Ayurved University has challenged an interim order dated 18th January, 2006 passed by the Presiding Officer, Jamnagar in Civl Misc. Application No.3/2006.

2. Shortly stated, facts leading to the present petition are that the petitioner University had engaged the respondent herein on consolidated salary as a compounder in one of its hospitals. Initially, the said engagement commenced from 9th December, 1999 and was to inure for a period of three months. Subsequently, such engagement continued from time to time. Apparently, respondent herein was interviewed on 28th April, 2000 pursuant to an advertisement issued by the University for filling up the said post on consolidated salary basis. The respondent came to be appointed by an order dated 29th April, 2000 on probation for a period of one year. Such probation period was continued from time to time and it is not in dispute that no order has been passed by the petitioner confirming the respondent or declaring that respondent has successfully completed the probation.

3. Apparently, appreciating termination on account of the petitioner not being satisfied with services of respondent herein, respondent approached the Civil Court by filing Regular Civil Suit No.619/2005 and also sought interim protection against possible termination.

4. The Civil Court by a reasoned detailed order dated 30th December, 2005 refused to accept exh.5 application of respondent herein. In the said order, learned Judge clearly came to the

conclusion that the probation period of the respondent herein has not yet been brought to a close. In the meantime, his performance was indifferent and had proceeded on leave for sometime unauthorisedly on number of occasions. The trial Court was therefore, of the opinion that the plaintiff being on probation, it was open for the employer to terminate his service.

5. The respondent herein therefore, preferred an appeal before the District Court. During the pendency of the appeal by impugned order dated 18th January, 2006, the District Court granted interim stay.

6. The petitioner therefore, approached this Court and this Court by an order dated 21st January, 2006 while issuing rule, also granted certain interim order . The exact implication of this order is the matter of dispute between the parties. However, it is not necessary for me to go into this question while taking up the petition for final disposal. Suffice it to say that under perceived protection by this Court the petitioner University implemented the notice of termination and as of now respondent stands terminated.

7. Having heard the learned advocates appearing for the parties, I find that the Appellate Court ought not to have granted interim direction in

favour of the respondent herein. The order passed by the learned Additional Senior Civil Judge, Jamnagar was perfectly in order. Before granting any interim protection, the Appellate Court ought to have verified whether respondent has any case for continuing in service. Without full fledge trial, the respondent herein cannot seek to continue his service which was sought to be terminated while still under probation. As noted earlier, the employer found that while still under probation, service of respondent herein was indifferent. He had proceeded on leave on number of occasions and had not discharged the duties to the full satisfaction of his employer.

8. Considering the totality of facts and circumstances of the case, the impugned order dated 18th January, 2006 cannot be sustained and same is therefore, quashed and set aside.

9. Since the petition is brought to this Court at an interlocutory stage, nothing stated by me in this order will prejudice either sides in the ultimate trial of the suit.

10. Subject to above observations, petition is allowed and disposed of accordingly. Rule made absolute. No costs.

(Akil Kureshi,J.)

(raghu)